

1                                    UNITED STATES DISTRICT COURT  
2                                    NORTHERN DISTRICT OF OHIO  
3                                    EASTERN DIVISION

4                    ERNEST G. COOK,

5                                    Plaintiff,

6                    -vs-

JUDGE BENITA PEARSON  
CASE NO. 4:22-CV-00077-BYP

7                    BOARD OF TRUMBULL COUNTY  
8                    COMMISSIONERS,

9                                    Defendant.

10                                    - - - -

11                    Video conference Zoom Deposition of PATRICK J.  
12                    PEROTTI, taken as if upon direct examination before  
13                    Kelli Rae Page, a Notary Public within and for the  
14                    State of Ohio, at 1:31 p.m. on Tuesday, July 11,  
15                    2023, pursuant to notice and/or stipulations of  
16                    counsel, on behalf of the Plaintiff in this cause.

17                                    - - - -

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23  
24  
25                                    Patrick J. Perotti

APPEARANCES:

(All participants were in attendance via remote connection through individual Zoom video conferencing as follows:)

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On behalf of the Defendant;

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On behalf of Michele Nicole Frenchko.

ALSO PRESENT:

Ernest Cook

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1 (Prior to the deposition, all parties  
2 agreed to the remote swearing in of the witness by  
3 the court reporter.)

4 - - - -

5 PATRICK J. PEROTTI, of lawful age,  
6 called by the Plaintiff for the purpose of direct  
7 examination, as provided by the Rules of Civil  
8 Procedure, being by me first duly sworn, as  
9 hereinafter certified, deposed and said as follows:

10 DIRECT EXAMINATION OF PATRICK J. PEROTTI

11 BY MS. GROEDEL:

12 Q. Would you, please, state your name for the record.

13 A. Patrick J. Perotti.

14 Q. What is your occupation?

15 A. I'm an attorney.

16 Q. Would you, please, give us a brief description of  
17 your education.

18 A. I received my Juris Doctorate from Cleveland  
19 Marshall College of Law, cum laude, in 1982, and I  
20 began practicing immediately thereafter.

21 Q. And where do you work?

22 A. I work at Dworken & Bernstein as a partner and as a  
23 senior partner in the firm.

24 Q. And for how long have you been with Dworken &  
25 Bernstein?

Patrick J. Perotti

01:32

1 A. Since law school graduation, 1982.

2 Q. And what areas do you practice law?

3 A. I'm a certified specialist by the State of Ohio Bar  
4 Association, the Ohio Supreme Court in the areas of  
5 employment and labor, and I practice in those  
6 areas. I also practice extensively in the areas of  
7 consumer class actions and wage and hour class  
8 actions.

9 Q. Do you belong to any professional organizations?

10 A. I belong to, you know, the typical -- the state bar  
11 association, certain plaintiffs' groups like -- I  
12 forget what it's called today. I don't know -- it  
13 was ATLA, or whatever it's called, the trade  
14 organizations for plaintiffs' bar. And I am  
15 certified in a number of different specialized  
16 courts such as the U.S. Court of International  
17 Trade, plaintiffs court, and the usual Ohio Supreme  
18 Court, the Sixth Circuit.

19 Q. And have you ever testified as an expert?

20 A. Yes.

21 Q. Approximately how many times?

22 A. Under ten.

23 Q. Please take -- were you provided two exhibits by  
24 Christina Carey?

25 A. I was provided materials and I, myself, looked

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1 through the docket of the case pending before Judge  
2 Benita Pearson. And, let's see, I was given, from  
3 your office, a copy of your -- it's been marked in  
4 some proceeding as Exhibit 2, which is your time  
5 records for this case, and a set of the motion  
6 practice dealing with this pending issue in the  
7 Motion for Sanctions, a brief in opposition to  
8 that, a reply, and the various attachments to those  
9 filings with the federal court.

10 Q. Okay. I would just to like you have authenticate  
11 that Exhibit 1 is a true and accurate copy of your  
12 LinkedIn profile.

13 A. Yes, it is.

14 Q. How do you and I know each other?

15 A. We probably met years ago at some employment law  
16 seminar, either the National Employment Lawyers  
17 Association or the Ohio Employment Lawyers  
18 Association.

19 Q. And have we worked on any cases together over the  
20 years?

21 A. We have worked on a few, yes. I would say probably  
22 two or three.

23 Q. Have you had an opportunity to assess my skills as  
24 an employment lawyer?

25 A. I have.

Patrick J. Perotti

01:35

1 Q. Today I'm going to ask you to opine on the  
2 reasonableness of my hourly rate of 420, which is  
3 the hourly rate I'm requesting for my work in this  
4 case on the sanction matter, and on the number of  
5 hours I have spent on the sanction matter.

6 Take a look at Exhibit Number 2.

7 A. I have looked at this in detail.

8 Q. And do you see that the hourly rate I am charging  
9 is \$420?

10 A. I do.

11 Q. Based on your education, training and experience,  
12 do you believe that is a reasonable hourly rate for  
13 an attorney with my skills and experience in this  
14 area of law and in this geographical area?

15 A. Yes.

16 MS. MINAHAN: Objection.

17 MS. GROEDEL: Okay. Do you want to  
18 state the basis for your objection?

19 MS. MINAHAN: I'm sorry?

20 MS. GROEDEL: Do you want to state the  
21 basis so I can try to correct it if it's a form  
22 issue or --

23 MS. MINAHAN: Yeah. My objection is  
24 you didn't qualify him as an expert on attorney  
25 fees, you just asked him if he had been

01:37

1 qualified as an expert.

2 Q. On what matters, what types of issues, Mr. Perotti,  
3 have you been qualified as an expert?

4 A. You asked me whether I have testified before as an  
5 expert in any proceedings, and I said, yes, I have,  
6 less than ten. And those cases specifically dealt  
7 with the reasonable, customary and ordinary hourly  
8 rates and number of hours for a type of work and  
9 work product in cases pending in the courts in  
10 Ohio, either state or federal court, and dealing  
11 particularly with the issues of employment.

12 Q. Thank you.

13 Based on your education, training and  
14 experience, do you believe that \$420 is a  
15 reasonable hourly rate for an attorney with my  
16 skills and experience in this area of law and in  
17 this geographical area?

18 A. I didn't catch the last part of your question. And  
19 in what, this geographic area?

20 Q. Yes.

21 A. Okay. Yes.

22 Q. And on what do you base your opinion?

23 A. I base my opinion on several things. First of all,  
24 the determination of an appropriate, reasonable,  
25 customary and ordinary hourly rate in a particular

Patrick J. Perotti



01:38

1 jurisdiction or geographic venue is made based on a  
2 number of factors.

3 Looking at the lawyer, those factors, of  
4 course, are licensure, number of years of  
5 experience, type of experience, specialty  
6 certifications, type of areas of practice, prior  
7 attorney's fees awards in areas dealing with those  
8 subjects.

9 Number two, it looks at analysis by courts and  
10 by professional organizations, such as bar  
11 associations, law schools and so forth, on what are  
12 the ordinary, customary and hourly rates for  
13 lawyers in particular geographic areas of a  
14 particular number of years of background, training  
15 and experience on a particular subject matter.

16 And your rate of \$420 is, in fact, according  
17 to the rates that are charged in the Cleveland area  
18 for your experience and background, under the  
19 typical hourly rate, which is considered to be  
20 reasonable, customary and ordinary, and they are --  
21 I think you have probably about the same number of  
22 years of experience as I do -- and they are  
23 dramatically under the rate which I charge, which  
24 is -- I think at this point it's over \$700 an hour,  
25 and it has been approved by numerous courts in this

Patrick J. Perotti

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1 jurisdiction including Judge Gwin, and others, and  
2 around the United States.

3 Q. You used the description of legal work performed  
4 and number of hours spent on this retention matter,  
5 on Exhibit 2?

6 A. I'm looking at Exhibit 2, and, yes, I can see it is  
7 a listing of date, description, the reporting  
8 individual who is charging the hours, the rate, the  
9 number of hours, and what that number of hours at  
10 that rate totals for that particular task.

11 Q. Based on your education, training and experience,  
12 do you believe the amount of time I spent on the  
13 tasks described in Exhibit 2 is customary and  
14 reasonable?

15 A. Having looked at the items that are listed on  
16 Exhibit 2, particularly the items which deal with  
17 filings with the Court, and, again, I looked at the  
18 Court's docket and reviewed the various filings,  
19 and having the experience in dealing with opposing  
20 counsel on issues such as reviewing correspondence,  
21 drafting, telephone calls, the items that are  
22 listed on this activities list, which is Exhibit 2,  
23 are reasonable, customary and ordinary in this  
24 jurisdiction for the type of work that you  
25 performed on those tasks.

01:41

1 Q. Do you see the amount of costs expended on this  
2 matter?

3 A. I do.

4 Q. In exhibit -- and based on your education, training  
5 and experience, is the expenditure costs identified  
6 on this exhibit reasonable and customary?

7 A. I can't opine on that because the only costs that I  
8 see here, I see expenses for \$25.58, is that what  
9 you are talking about?

10 Q. It is.

11 A. I don't know what that was for, so I couldn't say  
12 whether it was reasonable, but I will tell you in a  
13 matter dealing with this type of subject and with  
14 this many hours, \$25 is not unusual.

15 Q. Thank you.

16 MS. GROEDEL: I have nothing further.

17 MR. MILLER-NOVAK: Caryn, I want to  
18 stay on the record. I just want a little bit  
19 of clarity on -- when he's saying Exhibit 2,  
20 and that's Exhibit 2 attached to your motion  
21 for attorneys fees --

22 MS. GROEDEL: Yes.

23 MR. MILLER-NOVAK: I know that that's  
24 what it was called. I just want the record to  
25 be clear, because Kathleen and I both have

01:42

1 exhibits and now we're, kind of, starting with  
2 2, so I don't know how we want to note that for  
3 the record.

4 THE WITNESS: Counsel, if I could,  
5 what I was looking at is filed in Case  
6 4:22-civil-00077, Benita Y. Pearson, as docket  
7 number 74-2 HID 1155 through 1161.

8 So that's -- for the Court's record, that's  
9 what I think the Judge will be looking for as  
10 far as what document I'm looking at, so that  
11 would be it.

12 MR. MILLER-NOVAK: Yeah, I understand.  
13 I didn't want to steal your thunder, Patrick,  
14 and interrupt you, so I was waiting until you  
15 were done.

16 Do we -- for the purposes of this  
17 deposition, do we just want to refer to it as  
18 -- I mean, it doesn't really matter to me, I  
19 just want to make sure when I talk about it I'm  
20 staying consistent.

21 Do we just want to call it Exhibit 2, and  
22 then when I cross-examine him I'll, kind of, go  
23 backwards to 1?

24 MS. GROEDEL: However you -- whatever  
25 you would like to do and whatever you think is

01:43

1 easiest.

2 If they were misidentified differently here  
3 than they were in the court filing, just know  
4 that it's the same two documents, and if you  
5 would like to invert them and call what I have  
6 called A, Exhibit 1, or call it 2, the court  
7 reporter can do that.

8 MR. MILLER-NOVAK: All right. Well,  
9 Kelli, just let me know since you are the one  
10 tagging it, you know, sitting somewhere else  
11 than me, if you need me to call something,  
12 something else. Okay?

13 COURT REPORTER: It's fine. We'll be  
14 able to read it through the record and  
15 understand it, I believe.

16 MR. MILLER-NOVAK: Okay. Well, I'll  
17 let you be the boss of numbers and tags.

18 THE REPORTER: If they're already  
19 marked, we can leave them as is. I would  
20 prefer to do Defendant's A and B, but it's up  
21 to you.

22 MR. MILLER-NOVAK: That's fine. What  
23 I e-mailed you earlier, I don't know if you got  
24 it, I didn't tag them at all because I didn't  
25 know necessarily what I was a hundred percent

01:45

1 going to use, and everything that I have sent  
2 is already filed in the court in one way,  
3 shape, or form.

4 So did -- Caryn, did you send that -- or,  
5 Kelli, did you get the e-mail with the  
6 exhibits?

7 THE REPORTER: I'm not sure. I know I  
8 got Kathleen's. I don't know if I received an  
9 attachment with yours. I'll have to double  
10 check.

11 MS. MINAHAN: I forwarded them to you,  
12 Kelli, because I wasn't sure if Caryn had done  
13 it.

14 THE REPORTER: Oh, okay. So I do have  
15 them, the ones that Kathleen sent me.

16 MR. MILLER-NOVAK: Oh, okay. Great.

17 Well, Kathleen, thanks for doing my job for  
18 me.

19 MS. MINAHAN: Any time, Matt.

20 MR. MILLER-NOVAK: Okay. Alright.

21 Now that we got all that boring stuff out of  
22 the way, do you -- in terms of  
23 cross-examination, Kathleen, do you want to go  
24 first, do you want me to go first or --

25 MS. MINAHAN: You can go first.

01:45

1 MR. MILLER-NOVAK: Okay.

2 CROSS-EXAMINATION OF PATRICK J. PEROTTI3 BY MR. MILLER-NOVAK:

4 Q. Alright, Patrick, in your testimony you mentioned  
5 that Caryn's rate was reasonable based upon her  
6 experience.

7 How long has she been practicing law?

8 A. I know that she has been practicing at least 20  
9 years.

10 Q. Okay. But you don't know exactly how long?

11 A. I don't know the date she received her Ohio Bar  
12 license.

13 Q. Do you know what areas of law she practices?

14 A. Yes.

15 Q. You said that you had reviewed the filings in this  
16 case; is that correct?

17 A. Yes, sir.

18 Q. Did you review the Motion for Sanctions itself?

19 A. I did.

20 Q. Can I have you go to the Motion for Sanctions? Do  
21 you have it in front of you, by any chance?

22 A. Yes, sir, I do.

23 Q. Okay. Great.

24 MR. MILLER-NOVAK: Can we call this  
25 Exhibit A, then, I suppose?

Patrick J. Perotti

01:47

1

- - - - -

2

(Exhibit A was marked for purposes of

3

identification.)

4

- - - - -

5

Q. If you look at Exhibit A, which is Plaintiff's

6

Motion for Sanctions against Defendant And Its

7

Counsel, that is filed on May 4th, 2023, the

8

summary says Plaintiff seeks sanctions against

9

Commissioner Niki Frenchko for calling counsel for

10

plaintiff a -- I'll just say an "effing C," at the

11

stopping point of 30(b)(6) deposition testimony she

12

was giving on May 1st, 2023. Do you see that?

13

A. I do.

14

Q. On the second page there seems to be three bullet

15

points where Caryn, on behalf of Plaintiff Cook,

16

lays out three bullets of things that she cites as

17

the conduct she is seeking sanctions for. Do you

18

see that?

19

A. I see the bullet points on what would be page ID

20

207 in that filing.

21

Q. Okay. Sorry, I didn't hear. Sorry for the awkward

22

silence, Patrick.

23

The first one was drinking wine during her

24

deposition. Do you see that?

25

A. I see that bullet point.



01:49

1 Q. Yeah. And it says: "Ms. Frenchko will say it was  
2 water, but the Zoom recording shows her drinking  
3 from a wine glass twice. The first time she drank  
4 a yellow liquid," which she alleges apparently was  
5 white wine. "And the second time, a clear liquid,  
6 probably water," she alleges, "after Ms. Frenchko  
7 realized she had been caught on tape drinking  
8 wine." Do you see that?

9 A. Yes, I do.

10 Q. Okay. The second point says: "Being argumentative  
11 and feigning that she did not understand commonly  
12 used words." However, she says that that will be a  
13 subject of a second sanction motion to be filed  
14 after the court reporter finishes transcribing the  
15 testimony. Do you see that?

16 A. I see it.

17 Q. Okay. The third comment lays out the allegations  
18 that after at approximately 5:40 p.m. that she had  
19 to conclude the deposition, she being Caryn, for  
20 the day and would resume at a convenient time for  
21 all involved, there was an argument that happened,  
22 and then off record the comment is that she stated  
23 the words "effing C." Do you see that?

24 A. I see it.

25 Q. Okay. And I'm assuming you read the arguments of

01:50

1 the law, so you understand that, I guess, the  
2 general nature of this motion is, is that Plaintiff  
3 Cook And Its Counsel are seeking sanctions against  
4 Ms. Frenchko and as well as counsel for the county  
5 for basically making a statement that Caryn Groedel  
6 found offensive. Do you agree with that?

7 A. I don't agree or disagree. I was asked to give an  
8 opinion on the reasonableness, hourly rates in this  
9 community for this type of work and for the hours  
10 that were expended for this type of motion.

11 The issue of whether this conduct, whether  
12 it's bullet 1, 2 or 3, is within the Court's scope  
13 as sanctionable, is an ultimate issue and a matter  
14 of law for Judge Pearson, and it's not something on  
15 which I'll opine on.

16 Q. I didn't ask you that. Just to be clear, I'm not  
17 asking you to rule on the appropriate of sanctions  
18 and I am not asking for your opinion about the  
19 appropriate sanctions.

20 I'm asking you the goal, or what the motion  
21 itself is asking for. I'll represent, in my  
22 opinion, for you to give an opinion about the  
23 reasonableness of fees, wouldn't you agree part of  
24 what gauges the reasonableness of what the fees are  
25 trying to accomplish; correct?

01:52

1 A. No.

2 Q. So it's your opinion today that I can run up -- I  
3 could maybe bill my client \$50,000 on something  
4 that had nothing to do with the case, and that  
5 would be reasonable?

6 MS. GROEDEL: Objection.

7 A. Pardon me, but the hypothetical you are giving, I  
8 can't give you an answer because I don't have --

9 Q. I'm sorry, what was your response there?

10 A. I said the hypothetical you are giving me, I don't  
11 have any other facts or background, so I couldn't  
12 give you an answer.

13 Q. Okay.

14 Do you know -- are you aware, or have you  
15 reviewed any facts about Ms. Groedel's fee  
16 agreement with Mr. Cook?

17 A. I do not.

18 Q. So you have no knowledge of --

19 MS. GROEDEL: Objection.

20 MR. MILLER-NOVAK: I'm sorry?

21 MS. GROEDEL: I'll assert an  
22 objection.

23 MR. MILLER-NOVAK: Okay. The reason  
24 for your objection?

25 MS. GROEDEL: Relevance.

01:53

1 MR. MILLER-NOVAK: Okay.

2 Are you instructing him to not answer?

3 MS. GROEDEL: No.

4 Q. Okay. So I just -- I'm sorry, so what was your  
5 answer to that, Patrick?

6 A. What was the question? Can you repeat it?

7 Q. Okay. My question was are you aware of  
8 Ms. Groedel's fee arrangement with Mr. Cook?

9 A. (No reply.)

10 MS. GROEDEL: Same objection.

11 Q. Okay. So you're not aware of whether or not  
12 Mr. Cook would have to pay Ms. Groedel the 10,000  
13 plus dollars regardless of whether or not she's  
14 successful in this motion of having her attorney's  
15 fees awarded?

16 A. I don't know what her fee agreement says, and that  
17 wouldn't bear on my opinion.

18 Q. Okay. Why would it not bear on your opinion?

19 A. My opinion is solely that looking at the work that  
20 was done, number one, by a lawyer with a particular  
21 background, training and experience and number of  
22 years in practice is the hourly rate for that type  
23 of work in this type of case, an employment case,  
24 reasonable in this market, and the answer is yes.

25 And, second, are the types of activities and

01:55

1 the types of hours charged for those activities as  
2 listed on whatever exhibit number you are calling  
3 it, it's, again, page ID 1155 through 1161,  
4 reasonable, customary and ordinary for that type of  
5 work, and the answer is yes.

6 I don't opine on the merits of who is right or  
7 who is wrong about any of those issues.

8 Q. Okay. I understand that, but are you saying that  
9 you have no opinion on whether or not it's  
10 reasonable for Ms. Groedel to bill her client  
11 \$10,000 to seek sanctions of this nature?

12 A. I don't know what her contract with the client is,  
13 so I wouldn't be able to opine on that.

14 Q. So you have no opinion whether or not it's  
15 reasonable to bill your client \$10,000 to seek  
16 sanctions for offensive conduct that potentially  
17 neither advances -- that potentially doesn't even  
18 advance the substantive merit of the case?

19 A. Again, that's not subject to my opinion, so, no, I  
20 have no opinion on whether this merits or demerits  
21 an award of it.

22 Q. When did Ms. Groedel hire you to serve as an expert  
23 witness; do you remember the date?

24 A. It was within the last 30 days, I suspect.

25 Q. At any time did Ms. Groedel ask you to prepare an

01:57

1 expert witness report?

2 A. She did not.

3 Q. She did or did not?

4 A. She did not.

5 Q. Okay. Sorry, I don't mean to be rude.

6 A. Oh, no, you are not rude at all. I understand the  
7 issues of Zoom.

8 Q. I know.

9 A. I'm not sure if the court reporter heard me either,  
10 so thank you.

11 Q. Yeah. No problem. I have a love-hate relationship  
12 with Zoom depos, so I appreciate your willingness  
13 to repeat yourself multiple times.

14 So your answer was, no, she did not ask you to  
15 prepare a report?

16 A. Correct.

17 Q. Thank you, sir.

18 So if we can pull up what you referred to  
19 previously as Exhibit 74-2, which is Ms. Groedel's  
20 billing statements. Do you see these?

21 A. Yes. Yes, I have those in front of me.

22 Q. On the top, the second billing entry is on May 2nd,  
23 2023. Do you see that?

24 A. Yes.

25 Q. And part of that is receipt and review of part of

01:59

1 e-mail from opposing counsel, re scheduling  
2 remaining part of 30(b) deposition. Do you see  
3 that?

4 A. Yes.

5 Q. Isn't it true that Ms. Groedel would have had to do  
6 that regardless of any name that Ms. Frenchko would  
7 have called her?

8 A. I don't know what the status or the sequence was in  
9 the deposition. From what I read, the deposition  
10 was ongoing and was supposed to have been completed  
11 by a certain time, and wasn't.

12 Again, I don't opine whether that was  
13 reasonable or unreasonable by the witness. All I'm  
14 saying is looking at this time entry, if the Court  
15 believes the attorney that amount of time was spent  
16 to do those things, then that is a reasonable  
17 charge for those services.

18 Q. So you don't have any opinion on whether or not it  
19 was reasonable to request reimbursement of fees for  
20 Ms. Groedel preparing for the continuation of the  
21 same deposition?

22 A. Again, I don't have an opinion on whether the Court  
23 will deem it to be appropriate, or if certain  
24 things should be awarded or certain things should  
25 not be.

02:01

1 Q. Okay. So, in other words, your opinion today is  
2 limited entirely to what you consider to be the  
3 reasonableness of Ms. Groedel's billing rate,  
4 number one; correct?

5 A. Yes, sir.

6 Q. And then, number two, the time she spent on  
7 particular tasks, regardless of whether or not  
8 those particular tasks are traceable to the conduct  
9 that she alleges is sanctionable?

10 A. Yes. Again, assuming the Court believed that she  
11 spent that amount of time, then I am just opining  
12 that that amount of time would be reasonable for  
13 that type of activity by a lawyer in this type of  
14 case.

15 MR. MILLER-NOVAK: All right. I have  
16 no further questions at this time. Thanks.

17 This happened so quick, I forgot your last  
18 name. Do you mind if I say, "Thank you,  
19 Patrick"?

20 THE WITNESS: Yes. Thank you,  
21 Matthew.

22 MR. MILLER-NOVAK: Thank you.

23 CROSS-EXAMINATION OF PATRICK J. PEROTTI

24 BY MS. MINAHAN:

25 Q. Mr. Perotti, my name is Kathleen Minahan. I'm

Patrick J. Perotti



02:02

1 representing the Board of Trumbull County  
2 Commissioners in this lawsuit.

3 I wanted to let you know that you were  
4 identified to us on the Plaintiff's witness list as  
5 an expert as to the propriety of sanctions with  
6 respect to the issue before the Court as well as  
7 the reasonableness of Plaintiff's counsel's  
8 attorney's fees and costs request.

9 Based on your responses to Mr. Miller-Novak, I  
10 am guessing that you are going to tell me that you  
11 are not giving any expert testimony as to the  
12 propriety of sanctions with respect to the issue  
13 before the Court; is that correct?

14 A. It's partially correct. I wouldn't use the word  
15 "propriety." In other words, I'm not giving any  
16 opinion to suggest that, yes or no, that the  
17 judicial officer in this case should rule one way  
18 or the other.

19 If I'm asked questions about whether a lawyer  
20 responding to this type of conduct during the  
21 judicial proceeding is reasonable in what she's  
22 doing, that I can opine on.

23 Q. Okay.

24 A. And I have not been asked to do so, as of yet.

25 Q. Do you know when Ms. Groedel recorded the time

02:03

1 charges that are contained on her Exhibit 2?

2 A. I'm sorry, I don't understand your question.

3 Q. Do you know whether Ms. Groedel recorded her time  
4 charges at or near the time of the events recorded?

5 A. In other words, contemporaneous?

6 Q. Correct.

7 A. I don't know that.

8 Q. Are you aware that in the Motion for Sanctions  
9 Ms. Groedel requested \$10,000 for attorney fees?

10 A. That is what the motion indicates on page ID 209 of  
11 the federal court's record.

12 Q. Okay. And if you look at the date that was filed,  
13 that was May 4th, 2023; correct?

14 A. Correct.

15 Q. All right. If you would take a look at Plaintiff's  
16 Exhibit 2, please.

17 A. I have it.

18 Q. Okay. And if you would pull to page 1158, there is  
19 a time entry on that page for Ms. Groedel and  
20 that's 6/26/23. Do you see that?

21 A. Yes.

22 Q. Okay. And it indicates near the end of that,  
23 perhaps starting towards the middle, one of the  
24 entries is "Receipt and review of time and expense  
25 entries from C. Carey, and edited same so that

02:05

1 unrelated entries are redacted or redlined out."

2 Do you see that?

3 A. I see it.

4 Q. Okay. Will you agree with me that Ms. Groedel  
5 sought \$10,000 worth of attorney fees on May 4th,  
6 2023 and actually didn't look at what the attorney  
7 fees were until 6/26/2023?

8 A. I don't know when she looked at attorney's fees. I  
9 would agree with you that the request on May 4th,  
10 '23 for attorney's fees stated in the amount of  
11 \$10,000 was before those attorney's fees were  
12 incurred, and that is normal, reasonable and  
13 customary, especially in federal proceedings  
14 because under numerous federal laws which do  
15 attorney's fees shifting, the lawyer does not know  
16 until all the work is done how much the fees are,  
17 so the Court usually requires, especially, I think,  
18 Judge Gwin requires an estimate in advance how much  
19 the fees are going to be, and then if you go over  
20 or under you have to identify and itemize what you  
21 actually incurred.

22 Q. And nothing in that Motion for Sanctions talks  
23 about estimated fees or what's even being included  
24 in that; right? It just says \$10,000 in attorney  
25 fees; correct?

02:07

1 A. That's correct.

2 Q. All right. And when she went through the attorney  
3 fees and filed Exhibit 2, they suddenly ended up  
4 being \$10,105; is that correct?

5 A. I don't have a total for them. If you say that  
6 that's what the hours and time rates calculate or  
7 add up to be, then that would be the right number.

8 My sheet doesn't have a total. It has a total  
9 with expenses and, again, I also -- I don't know  
10 what was not included in this. I know that as an  
11 expert witness when I'm practicing in the field,  
12 and I am doing attorney's fees and I am giving a  
13 Court an estimate I might eliminate certain items  
14 or tasks which would take me over the amount of the  
15 estimate.

16 But, again, I don't know what she did or  
17 didn't do as far as adding or subtracting hours to  
18 this particular essay.

19 MS. MINAHAN: Kelli, can you pull up  
20 exhibits for me, or do you need me to do that,  
21 or how do you want to do that?

22 - - - - -

23 (Off the record.)

24 - - - - -

25 Q. Okay. Are you seeing what's marked an order?

02:09

1 A. I do see that.

2 Q. Okay.

3 MS. MINAHAN: I'm going to mark that  
4 as Defendant's Exhibit B {sic}.

5 - - - - -

6 (Defendant's Exhibit C was marked for purposes of  
7 identification.)

8 - - - - -

9 MS. MINAHAN: And just for the record,  
10 this is an order which is identified as  
11 Electronic Case Filing Document Number 44.

12 Q. If you look at the highlighted language down at the  
13 bottom, it ordered Plaintiff's counsel to file a  
14 brief clarification about the target of her Motion  
15 for Sanctions by four p.m. on May 9th, 2023. Do  
16 you see that?

17 A. I see the highlight, yes.

18 Q. Okay. And then I'm going to show you another  
19 couple of exhibits and then I'll ask you my  
20 question.

21 All right. Are you looking at an order right  
22 now that is Electronic Case Filing Document Number  
23 67?

24 A. I am looking at Document 67 in this case on the  
25 federal docket.

02:10

1 Q. Okay. And this is, kind of, I guess you would say,  
2 a reminder from the Court to Ms. Groedel that she  
3 had ordered clarification about the targets of the  
4 motion; is that correct?

5 A. I don't know what the Court's intent was. I can  
6 read the language, and the language says: "Its  
7 Counsel caused the Court to seek clarification  
8 about whether Plaintiff also intends to seek  
9 sanctions against Defendant Frenchko's counsel or  
10 any other counsel."

11 MS. GROEDEL: Objection as to  
12 relevance.

13 Q. And it also says as of this writing plaintiff has  
14 not complied with her order from the previous  
15 document; correct?

16 A. I see that.

17 Q. Okay. All right.

18 And if you take a look now at what I'm going to  
19 mark as Defendant's Exhibit -- I'm sorry, the  
20 previous one would be Defendant's Exhibit C. This  
21 one will be Defendant's Exhibit D.

22 - - - - -

23 (Defendant's Exhibit D was marked for purposes of  
24 identification.)

25 - - - - -

02:11

1 Q. And this is an Electronic Case Filing Document  
2 Number 69. And at the top of the page --

3 MS. GROEDEL: I'll put a continuing  
4 objection to testimony regarding this order.

5 MS. MINAHAN: And the basis for which  
6 is --

7 MS. GROEDEL: It's just relevance. I  
8 was clear about what I was using his testimony  
9 for, and it is very, very narrow, and this is  
10 not what he was prepared to discuss. I didn't  
11 review this with him. I just don't think it's  
12 relevant to the reasonableness of my rate and  
13 time spent.

14 MS. MINAHAN: Okay. Well, I'll get to  
15 my question and then maybe it will be clear.

16 Q. So this is Document Number 69, it indicates on June  
17 7th, 2023 the Court ordered Plaintiff to, quote,  
18 succinctly name the targets of the Motion for  
19 Sanctions, end quote.

20 And then it cites two other Electronic Case  
21 Filing Documents that we have looked at.

22 It also indicates: "As of the issuance of this  
23 order, Plaintiff had not done so, although the  
24 Court has ordered such clarification twice."

25 Did I read that correctly?

02:13

1 A. Yes. The document says what it says.

2 Q. Okay. So I guess my question to you is, is it  
3 typical, in your experience, for a \$420 an hour  
4 lawyer to have to be told three times by the Court  
5 to do something?

6 A. That's not something that I'm giving an opinion on.

7 Q. Would you pay a lawyer \$420 an hour if they ignored  
8 Court orders, as Ms. Groedel has done?

9 A. Again, I'm not giving an opinion on that subject.

10 - - - - -

11 (Discussion Off the record.)

12 - - - - -

13 A. Again, I'm not offering an opinion on that subject.

14 Q. Aren't you offering an opinion about the  
15 reasonableness of what Ms. Groedel is charging for  
16 the legal services she is performing?

17 A. Yes.

18 Q. Isn't part of what effects that how well she does  
19 her job?

20 A. No, not at all. The determination of hourly rates  
21 does not look into success or failure in any way.  
22 It simply looks into background, training and  
23 experience and the number of years you have been  
24 practicing and the field in which you are  
25 practicing.



02:14

1 The Court, obviously, can take into account  
2 what it considers to be reasonable based on these  
3 factors, which are not something that I am opining  
4 on or something that would be within my pen  
5 because, again, I'm not the Court.

6 All I'm saying is for this type of lawyer,  
7 this type of work, this community, with this number  
8 of years, \$420 is a reasonable rate, and for the  
9 items on the activity list, that is ordinary,  
10 reasonable and customary for that type of work.

11 Q. And I am not asking you about success or failure on  
12 the merits of a lawsuit. I'm asking you about the  
13 bare minimum of keeping up with orders that are  
14 issued in a case. Does that factor at all into  
15 your determination of whether \$420 an hour is a  
16 reasonable rate for a lawyer?

17 A. No.

18 MS. GROEDEL: Objection. He doesn't  
19 know the circumstances. This is really far  
20 afield. I had told you, you know that.

21 MS. MINAHAN: Thank you. You have  
22 objected.

23 MS. GROEDEL: I object because it's  
24 unclear what the circumstances were surrounding  
25 this order.

02:15

1 MS. MINAHAN: I didn't hear any of  
2 that, I'm sorry.

3 MS. GROEDEL: I object based on he,  
4 Mr. Perotti, has not been apprised of any facts  
5 surrounding this order or when I was able to  
6 comply with the Court's request for  
7 clarification, so I object.

8 MS. MINAHAN: Alright. I don't think  
9 any of that is relevant, but that's okay.

10 Q. Mr. Perotti, do you know whether or not  
11 Ms. Groedel's rate has ever been found to be  
12 reasonable by any Court?

13 A. I do not know.

14 Q. You do not know?

15 A. No, I do not know.

16 Q. Okay.

17 If a lawyer were to misstate the governing  
18 legal standard in an employment discrimination case  
19 in a brief and opposition to summary judgment, is  
20 that the quality of a lawyer that you would pay  
21 \$420 an hour for?

22 A. I'm not opining on that issue. Again, that doesn't  
23 bear on what is reasonable, ordinary or customary  
24 for attorneys in a particular geography based on  
25 the trends in that area. That's up to the

02:16

1 reviewing Court to determine whether other  
2 activities in the case would effect whatever  
3 judgment is entered, not from my expert opinion.

4 Q. So is it correct to say then that you are not  
5 opining that Caryn Groedel's reasonable hourly rate  
6 is \$400, but rather that someone who has her years'  
7 of experience in her practice area and in her  
8 geographical area that a reasonable rate for them  
9 would be \$420 an hour?

10 A. I'm opining based on her background, training and  
11 service, in which I am familiar, justifies charging  
12 \$420 an hour and, in fact, substantially more than  
13 that, regardless of her success or failure rate.

14 And I would be interested to know if a Court  
15 previously determined that that was not reasonable  
16 for her, based on her conduct, or anything else,  
17 but no one has provided me that information, and if  
18 we have it, I would be happy to review.

19 Q. Are you testifying then that \$420 an hour, in your  
20 expert opinion, is a reasonable rate for Caryn  
21 Groedel's services?

22 A. Yes, in this case.

23 Q. And what does that mean, "in this case"?

24 A. Again, I wouldn't give you an opinion if she said,  
25 "I want to charge \$420," and end of story. I would

02:18

1 need to know what the subject matter was, what type  
2 of case it was.

3 The reason why the hourly rate is determined  
4 is -- the hourly rate for somebody with her  
5 background, training and experience in a  
6 landlord/tenant case would be much less.

7 MS. MINAHAN: Those are all the  
8 questions I have. Thank you, Mr. Perotti.

9 THE WITNESS: Thank you, ma'am.

10 MS. GROEDEL: That's it.

11 Kelli, I am ordering it. I'm ordering the  
12 transcript on an expedited basis because the  
13 hearing is Friday. Thank you, everyone.

14 We will review. I mean, I'm going to  
15 recommend that Pat review.

16 THE WITNESS: I will review then.

17 - - - - -

18 (Whereupon, the deposition was concluded at  
19 2:19 p.m.)

20 - - - - -

21 (Signature not waived.)

22 - - - - -

23

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Patrick J. Perotti

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-Patrick J. Perotti

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